

for their products. New technologies (DBS, MMDS, the Internet, digital TV) promise even more radical increases in supply and competition.

In 1995, the new UPN and WB networks had just come into being. Since then, these networks have grown, expanding their base of owned stations and affiliates. While both are still primarily focused on prime time programming, UPN and WB are significantly stronger than they were in 1995. In addition, Paxson has announced plans to begin a seventh network later this year.

As the number of actual and potential networks grows, stations have greater bargaining power, not less.¹¹ NASA's position amounts to an assertion that, notwithstanding an increase in the actual number of national broadcast networks (fostered, in part, by relaxation of ownership restrictions), there has been no change in the bargaining position of stations in negotiations over terms and conditions of affiliation. This is contrary to economic principle and common sense: Obviously, an increase in the number of viable, attractive alternative courses of action *increases* bargaining strength.

During this same period, the non-network group owners increased the number of stations they owned. Because of the increased value of networking engendered by relaxation of ownership limitations and the benefits of aggregation of local audiences they bring to the table, these group owners enjoy significant bargaining power in their negotiations with national networks. The following tables show that the largest non-network group owners have taken advantage of the relaxation in the national ownership rules to add stations and that the percentage of stations that are owned by non-network groups has increased substantially since year end 1994.

¹¹ This is especially true where the number of local stations remains fixed as it essentially has since 1995. Specifically, the number of commercial VHF stations has declined by one since 1995, while there has been only a slight increase in the number of commercial UHF stations. See "By the Numbers," *Broadcasting & Cable*: July 10, 1995 at 54 and July 13, 1998 at 71.

Table 1
Top 10 Non-Network Group Owners
Year End 1994 and 1997

Year End 1994		Year End 1997	
Owner	Stations	Owner	Stations
Pulitzer Publishing Co.	12	Benedek Broadcasting Co. LLC	27
Silver King Communications Inc.	12	Raycom Media Inc.	26
Viacom International Inc.	12	Sinclair Communications Inc.	20
New World Communications Group	11	Silver King Communications Inc.	19
Perenchio TV Inc.	11	A.H. Belo Corp.	18
Providence Journal Broadcasting Corp.	11	Gannett Broadcasting Group	18
Trinity Broadcasting Network Inc.	11	Lee Enterprises Inc.	16
Lee Enterprises Inc.	10	Tribune Broadcasting Co.	16
Young Broadcasting Inc.	10	Young Broadcasting Inc.	16
Better Communications Inc.	9	Hearst-Argyle Television Inc.	15
<i>Average</i>	<i>10.9</i>	<i>Average</i>	<i>19.1</i>

Note: Paxson Communications was excluded from the Top-10 group owners for year end 1997 even though it has not yet launched its network. At this time, Paxson owned 27 stations, therefore, its exclusion makes our calculation of the average conservative.

Source: "Ownership of Commercial Television Stations," *Television & Cable Factbook*: 1998 edition, A-1445 through A-1474; and 1995 edition, A-1361 through A-1394.

Table 2
Number of Non-Network Group-Owned and
Separately-Owned Commercial Television Stations
Year End 1994 and 1997

	Number of Commercial Television Stations	
	Year End 1994	Year End 1997
Group-Owned	821	881
Separately-Owned	304	251
Total	1,125	1,132
Percent Group-Owned	73%	78%
Source: "Ownership of Commercial Television Stations," <i>Television & Cable Factbook</i> . 1998 edition, A-1445 through A-1474; and 1995 edition, A-1361 through A-1394.		

This trend suggests that the affiliates, in fact, have substantial bargaining power in dealing with the networks. Not surprisingly, the affiliates appear to have more than held their own in recent negotiations related to the level of network compensation. Network efforts to restructure compensation dramatically, especially following the rebidding of the NFL television package¹² were resisted successfully by the affiliates (led by the larger group owners¹³). While some changes were ultimately agreed to, the affiliates apparently won key concessions from the networks on exclusivity from cable.¹⁴ One trade press account of the CBS negotiations described the affiliates as “positively giddy” after the sessions.¹⁵ It is somewhat disturbing to see NASA present a totally different face to the Commission.

The problem for NASA is that its core argument rests on a false economic premise: that stations in different local markets are economic *substitutes* rather than complements for one another. Thus, NASA’s mistaken view is that if a network owns more stations in other markets, that somehow weakens the bargaining strength of stations located in different markets. Economic reality is that stations in different markets are potential *complements* to one another in terms of networking. Effective coordination of their broadcast activities enables the realization of economies of larger scale program production and distribution, which in turn *increases* the value of what an individual station brings to the bargaining table in terms of a potential affiliation. Individual stations supply the means for realizing economies in production and distribution through networking. Rule changes

¹² These changes were driven, in large part, by growing competition for various programming rights from established cable networks, most of which have two revenue streams on which to rely; *i.e.*, advertising and per-subscriber payments from local cable operators. One trade press account described the networks’ concerns in the following terms: “[T]he former Big Three broadcast TV networks were getting tired of subsidizing the 50% profits of their affiliates, while the networks earned about 6 cents on the dollar. Meanwhile, the stations sometimes have seemed content to ride their networks into oblivion, steadfastly refusing to accept lower affiliation fees even as programming and sports licensing costs increase exponentially.” See “TV Networks Ponder New Distribution Structure,” *Media Daily*, April 7, 1998.

¹³ A number of reports noted that the major group owners formed the strongest opposition to the various network plans. See “Stations Balk at NFL Payments,” *Television Digest*, May 18, 1998.

¹⁴ See, for example, Cynthia Littleton, “Fox, affils ink game plan over NFL,” *Variety*, August 3, 1998, at 29; “‘Progress’ at ABC on Compensation and Exclusivity,” *Television Digest*, June 8, 1998; “Network Affiliates Negotiating Broadcast Exclusivity Deals,” *Warren’s Cable Regulation Monitor*, June 8, 1998; and “Exclusivity Big Part of CBS NFL Deal,” *Television Digest*, June 8, 1998.

¹⁵ See Steve McClellan, “CBS Affiliate Bill for NFL Pushes \$400 Million (National Football League Rights Fees),” *Broadcasting & Cable*, January 26, 1998 at 28.

that *lower* the costs and increase the potential profitability of networking arrangements (*e.g.*, relaxation of ownership limits that reduce transactions costs of putting together effective network coalitions) *increase* the value of the inputs of a network — *viz.*, airtime on individual stations — and *increase* the stations' bargaining power by enhancing the potential value of what they bring to the table.¹⁶

Conclusion

Based on assertions that bad things will happen if the networks (but implicitly not other group owners) get bigger and warmed-over economic “evidence” which is clearly outdated, NASA hopes to persuade the Commission to retain its ill-conceived limits on national ownership in order to preserve localism. These assertions run contrary to the evidence already presented to the Commission that expanded network (and other group) ownership and the accompanying increases in efficiency have strengthened local stations (particularly weak UHF stations), have led to more local news and public affairs programming and have increased the bargaining power of the affiliates. We repeat the recommendation we made in our earlier study: the Commission should repeal the national ownership cap or, at the very least, raise the cap substantially while retaining the UHF discount without modification.

¹⁶ Since the vast majority of the network affiliates are group-owned, and many group owners, other than the networks, have benefitted from relaxation of the national ownership caps (and can be expected to benefit from further relaxation or repeal), NASA's real objective in this proceeding may be to shackle the networks as group owners in ways in which non-network group owners are not.

CERTIFICATE OF SERVICE

I, LaVonnia Brown, do hereby certify that on this 21st day of August, 1998, copies of the foregoing "Joint Reply Comments" were delivered by first class mail, unless otherwise indicated, to the following parties:

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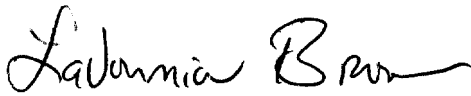
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